Hepting et al v. AT&T Corp. et al Doc. 46

The Electronic Frontier Foundation

April 11, 2006

Hon. Vaughn R. Walker
Chief Judge
United States District Court
for the Northern District of California
Courtroom 6
450 Golden Gate Avenue, 16th Floor,
San Francisco, CA 94102

Re: Hepting v. AT&T C-06-0672-VRW
Administrative Motion for an Order Shortening Time

Dear Judge Walker:

I am co-counsel to plaintiffs in this matter. I write in preliminary response to defendants' Administrative Motion for an Order Shortening Time as to AT&T's Motion to Compel Return of Confidential Documents, filed at 5pm Monday, April 10, 2006, which seeks an order requiring a response to defendants' substantive Motion to Compel Return by Thursday, April 13, 2006 . I left a message with the court clerk about this matter at approximately 6pm on Monday, shortly after receiving the Administrative Motion through the ECF system.

This motion was filed in violation of Local Rule 7-11(a) and seeks to force plaintiffs to respond to a complicated, 10 page motion seeking a serious evidentiary sanction by Thursday, April 13, 2006. We ask that defendants' Administrative Motion be summarily denied, or, at a minimum, that plaintiffs be allowed the three days to respond to the Administrative Motion for an Order Shortening Time as provided under Local Rule 6-3 and that an appropriate schedule for defendants' motion be entered only thereafter. This Administrative Motion is improper in three ways.

First, defendants filed their Administrative Motion without first attempting to contact plaintiffs' counsel to negotiate a reasonable briefing schedule as required under Local Rule 7-11(a), and further failed to provide a declaration from counsel giving any reason why such negotiation could not be undertaken.

Second, Defendants' proposed schedule ignores Local Rule 6-3, which grants plaintiffs three days to respond to a request for shortened time.

Third, plaintiffs will be greatly prejudiced if they are required to respond within three days to defendants' Motion to Compel Return. In the motion defendants ask the court to eviscerate key evidence in support of plaintiffs' pending motion for preliminary injunction and to strike two declarations from the court record. Defendants' base their motion on several factual claims about AT&T systems and also make serious claims against plaintiffs' counsel. Plaintiffs deserve the opportunity to fully respond to those arguments both legally and factually and to litigate this critical

Dockets.Justia.com

evidentiary issue on a reasonable schedule. Defendants proposed schedule would give plaintiffs less than three days to present an opposition and all supporting evidence to the motion, but would then give defendants five days to prepare their reply.

Plaintiffs see no reason that defendants' motion for return of documents requires shortened time, much less the grossly expedited schedule they request. Defendants have presented no evidence that plaintiffs are unable to maintain the confidentiality of the information filed under seal or that plaintiffs have violated their duties under Local Rule 79-5 to keep the information confidential pending the court's decision. AT&T has obviously not been deprived of the use of the documents in the meantime and presents no evidence that any information contained in the documents has been used to harm AT&T or its customers. The question of whether the documents should remain under seal is already pending before the Court in the motion under Local Rule 79-5. Defendants' brief makes various claims aimed at actions taken by a non-party witness, but the motion to compel return of documents is not aimed at that witness and even if granted, would not bind him. In short, this motion to compel return of documents should be handled on the Court's ordinary motion schedule, and the question of whether the documents should remain under seal until that time should be decided by the court under the process already set up under Local Rule 79-5.

Defendants have ignored several Local Rules in bringing their Administrative Motion and have attempted to prejudice plaintiffs by seeking a grossly shortened schedule for plaintiffs' response. Their Administrative Motion should be denied and defendants should be required to bring this motion on an ordinary motion schedule. At a minimum, plaintiffs should be allowed to file their full opposition to defendants' Administrative Motion according to Local Rule 6-3, and their response to defendants' Motion for Return of Documents should not be due on that same day. Plaintiffs would be happy to discuss this matter further with the Court and defendants. I can be reached at (415) 436-9333 x108

Sincerely,

ELECTRONIC FRONTIER FOUNDATION

CINDY A. COHN
Attorneys for Plaintiffs

Cc: Defense counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Reed R. Kathrein

REED R. KATHREIN

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
E-mail:ReedK@lerachlaw.com

T:\CasesSF\AT&T Privacy\CERTIFICATE OF SERVICE.doc

Mailing Information for a Case 3:06-cv-00672-VRW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Kevin Stuart Bankston**
  bankston@eff.org
- **Cindy Ann Cohn**
  cindy@eff.org wendy@eff.org;barak@eff.org
- **Bruce A. Ericson**
  bruce.ericson@pillsburylaw.com
- **Jeff D Friedman**
  JFriedman@lerachlaw.com RebeccaG@lerachlaw.com
- **Eric A. Isaacson**
  erici@lerachlaw.com jackiew@lerachlaw.com
- **Reed R. Kathrein**
  reedk@lerachlaw.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Corynne McSherry**
  corynne@eff.org
- **Maria V. Morris**
  mariam@mwbhl.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Kurt Opsahl**
  kurt@eff.org
- **Shana Eve Scarlett**
  shanas@lerachlaw.com e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com
- **Tze Lee Tien**
  tien@eff.org
- **Theresa M. Traber, Esq**
  tmt@tvlegal.com
- **James Samuel Tyre**
  jstyre@jstyre.com jstyre@eff.org
- **Bert Voorhees**
  bv@tvlegal.com
- **Richard Roy Wiebe**

wiebe@pacbell.net

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)